

AUG 26 1998

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

Federal Communications Commission  
Office of Secretary

In the Matter of

Implementation of the  
Telecommunications Act of 1996

CC Docket 96-115

Telecommunications Carriers' Use  
Of Customer Proprietary Network  
Information and Other  
Customer Information

COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")<sup>1</sup> respectfully submits these Comments in support of GTE Service Corporation's ("GTE") Petition for Reconsideration of the Common Carrier Bureau's ("Bureau") *Clarification Order* in the above-captioned proceeding.<sup>2</sup>

<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

<sup>2</sup> See In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Order, CC Docket No. 96-115, DA 98-971, released May 21, 1998 ("Clarification Order").

CTIA also supports the Petitions for Reconsideration filed separately by Comcast Cellular Communications and Vanguard

In the *Clarification Order*, the Bureau acknowledges that the Commission did not address a carrier's ability to use customer proprietary network information ("CPNI") when its customers obtain their telecommunications service as part of a bundled package that includes non-telecommunications services offerings such as CPE and information services.<sup>3</sup> Although the Bureau attempts to clarify this issue with respect to CMRS providers,<sup>4</sup> its decision does not resolve the uncertainty created by the *CPNI Second Report and Order*.<sup>5</sup> Rather, the Bureau's clarification has the unintended consequences of precluding a CMRS provider from using CPNI to market bundled wireless telecommunications services with CPE, *unless the CMRS provider can demonstrate that the*

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Cellular Systems, Inc. on July 22, 1998, in this proceeding ("Comcast Petition" and "Vanguard Petition").

<sup>3</sup> *Clarification Order* at ¶3.

<sup>4</sup> [W]hen a customer purchases CPE or information services from a carrier that are bundled with telecommunications service, the carrier subsequently may use any customer information independently derived from the carrier's prior sale of CPE to the customer or the customer's subscription to a particular information service offered by the carrier in its marketing of new CPE or a similar information service that is bundled with telecommunications service. *Clarification Order* at ¶4 (emphasis added).

<sup>5</sup> See In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 and 96-149, FCC 98-27, released Feb. 26, 1998 ("CPNI Second Report and Order").

customer previously obtained the CPE from the same provider offering the bundled package.<sup>6</sup> Unfortunately, the Bureau's conclusion with respect to a carrier's permitted use of its customers' CPNI is predicated on false assumptions concerning the bundling of wireless services and CPE. Accordingly, absent the relief sought by GTE, the Commission's rules constrain the appropriate use of CPNI to offer competitive and improved services to wireless customers.

By conditioning a CMRS provider's subsequent use of CPNI on information independently derived from the carrier's prior sale of CPE to the customer, the Bureau must have assumed that a CMRS provider has tracked such sales and can relate that historical information to a customer's CMRS service. As GTE notes, this is not the case for many CMRS providers.<sup>7</sup>

The Commission has long recognized that due to the competitive nature of the CMRS industry, the bundling of CPE and wireless service provides real benefits to consumers. As GTE has shown, a carrier's use of CPNI is unreasonably constrained without reliable mechanisms to determine whether a customer has purchased CPE from the carrier in the past.<sup>8</sup> Accordingly, CTIA

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<sup>6</sup> GTE Petition at 2.

<sup>7</sup> GTE Petition at 7-10.

<sup>8</sup> Moreover, given the competitive benefits associated with bundling, the *Clarification Order* would lead to harmful discrimination if some carriers, but not their rivals, had access to the historical records required by the *Clarification Order*.

supports GTE's request for clarification that Section 222 of the Telecommunications Act of 1996<sup>9</sup> and the *CPNI Second Report and Order* allow CMRS carriers to use CPNI to market CPE as part of bundled packages until the implementation of reliable tracking mechanisms.<sup>10</sup>

The *Clarification Order* fails to recognize the inter-relationship between wireless services and handsets, and how critical that relationship is to CMRS competition. Unlike wireline services, CMRS carriers have deployed a myriad of air interfaces, *i.e.*, analog, TDMA, CDMA, GSM 1900. To change from analog to digital service or from one digital technology to another requires a new handset. Market demands often dictate that CMRS carriers provide customers with a replacement handset when switching from one wireless carrier to another carrier, or when a carrier seeks to upgrade a customer from analog to digital service.

Second, CMRS roaming relies upon CMRS carriers' ability to support compatible handsets on their networks, regardless of whether the customer purchased the handset from the CMRS carrier or elsewhere, *i.e.*, the CMRS carrier's roaming partner, reseller, or mass-marketed retail outlets. Finally, because the

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<sup>9</sup> The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. §§ 151 *et seq.*) (1996).

<sup>10</sup> GTE Petition at 2.

Commission's rules have always permitted CMRS customers the choice of obtaining a handset from the carrier or any other vendor,<sup>11</sup> a CMRS carrier must support all CPE compatible with its air interface, regardless of whether the customer has purchased the CPE from the carrier or another vendor.

CTIA concurs with the Petitioners that the Bureau, as well as the Commission, must consider the competitive nature of the CMRS marketplace in its reconsideration and clarification of the CPNI rules as they relate to CMRS carriers. The Telecommunications Act of 1996 requires a balance between customer privacy and the statutory obligation to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly [the] deployment of advanced telecommunications...."<sup>12</sup> The Commission must ensure that its evaluation and resolution of the CPNI issues strike an equitable balance between customer privacy rights and CMRS carriers' ability to better serve their customers by offering pro-competitive bundles of CPE and wireless services.

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<sup>11</sup> See In the Matter of An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, Memorandum Opinion and Order on Reconsideration, 89 FCC 2d 58,85(1982).

<sup>12</sup> JOINT STATEMENT OF MANAGERS, S. CONF. REP. No. 230, 104th Cong., 2d Sess. 1 (1996).

CTIA also supports the Petitioners' request for reconsideration of the *CPNI Second Report and Order* and the *Clarification Order*, particularly the win-back provision of the CPNI rules.<sup>13</sup> CTIA's and its members' Petitions for Reconsideration have previously demonstrated the importance of CPNI to win back customers in a competitive CMRS market.<sup>14</sup> Accordingly, CTIA respectfully requests that the Commission clarify that Section 222 and the *CPNI Second Report and Order* permit CMRS carriers to use CPNI to market service offerings and bundled packages to "win back" former customers.

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<sup>13</sup> *CPNI Second Report and Order* at ¶85 (to be codified at 47 C.F.R. §64.2005(b)(3)).

<sup>14</sup> See In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Petition for Reconsideration and Petition for Forbearance of the Cellular Telecommunications Industry Association, filed May 20, 1998. See, e.g., Petition for Reconsideration of Comcast Cellular Communications, Inc., filed May 26, 1998; and Petition for Reconsideration and Clarification of Vanguard Cellular Systems, Inc., filed May 26, 1998 in this proceeding.

**CONCLUSION**

For the aforementioned reasons, CTIA supports the Petitions for Reconsideration of the *Clarification Order* and the *CPNI Second Report and Order*.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Andrea D. Williams", is written over a horizontal line.

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